

**VERIGON**  
**Terms and Conditions of Sale**

9/1/2022

The Terms and Conditions of Sale ("Terms") contained herein shall apply to all quotations and offers made by and purchase orders accepted by Verigon. These Terms apply to all sales made by Verigon except to the extent the Terms conflict with a Sales Agreement or Master Purchase Agreement signed by Verigon and Buyer. These Terms apply in lieu of any course of dealing between the parties. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by the Buyer. In such case, the Terms contained herein shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. Verigon's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein.

**1. TERMS OF AGREEMENT.** The specifications on the face hereof, together with the following terms and conditions, constitute the entire Agreement between Verigon and Buyer. The terms and provisions of this acknowledgement shall be controlling. Any objections to any terms herein, including provisions which are in addition to or different from those contained in Buyer's forms, must be in writing and shall not be deemed timely unless received by Verigon within ten (10) days from the date of mailing of this Agreement. If Buyer makes timely objection to any term herein, Verigon shall have the right to withdraw its acceptance and this acknowledgement. Buyer's failure to object as specified will be deemed conclusive acceptance of all the terms and conditions of this acknowledgment. No acceptance by the Verigon of any order shall be deemed to be an acceptance of any provision of the Buyer's purchase order form. No purchase order or written or oral agreement will modify this order, including these terms and conditions, unless specifically agreed to, in writing, by Verigon. The invalidity of any provision of this Agreement will not affect the validity of any other provision.

**2. PRICES AND TERMS / TAXES.** Price, terms and availability of merchandise are subject to change without notice, including but not limited to changes caused by the fluctuations in market price, tariffs, availability or quality of components or precious metals employed in the manufacture of the goods described herein. Unless otherwise provided on the face hereof, payment hereunder shall be due net thirty (30) days from the date of shipment. All amounts past due shall bear interest at the rate of 1.5% per month or at the maximum rate allowable by Arizona law. Verigon's obligation to produce or deliver hereunder is conditioned upon continued good credit of Buyer and upon Buyer's payment when due of any sum owing by Buyer to Verigon under any agreement between the parties. Based on Verigon's reasonable judgment, if Buyer's financial condition at the time the merchandise is ready for shipment does not justify the terms specified, Verigon reserves the right to change these terms, to require full or partial payment in advance, or to ship the goods C.O.D.

Prices do not include any sales, use, excise, property, import, export or such taxes that may be levied on the transaction by local, state, federal or foreign governments. Any such taxes shall be the responsibility of Buyer. If Verigon is required to pay any such taxes, the cost shall be added to the invoice or billed to Buyer separately.

**3. SHIPMENTS.** Shipment dates are based upon Verigon's best judgment and are subject to factory schedules and production limitations, and hence are not guaranteed. Buyer recognizes and agrees that all shipments will be Incoterms 2010 EXW. Buyer is responsible for all transport and carrier costs from Verigon's dock, including expediting.

Buyer reserves the right to select the means of transport and carrier for shipment of the Products, notwithstanding anything herein to the contrary.

**4. DELIVERY IN INSTALLMENTS.** Verigon reserves the right to make delivery in installments, unless otherwise expressly stipulated herein. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.

**5. DELAY.** Verigon shall not be liable for delays in performance caused by act of God, fire or other casualty, accident, strike, shortage of labor or materials, governmental action or other cause beyond Verigon's reasonable control; and the time for Verigon's performance shall be extended by the period of any such delay.

**6. LIMITED WARRANTY.** Except as provided herein, Verigon expressly excludes all warranties, expressed or implied, including warranties of merchantability and fitness for a particular purpose. Verigon warrants to buyer that all of its products shall be free from defects in workmanship during normal use and service. No agent, employee or representative of the Verigon has any authority to bind Verigon to any affirmation, representation of warranty concerning the goods sold under this Agreement, and unless an affirmation, representation or warranty made by an agent, employee or representative is specifically included within this Agreement, it is not deemed a part of the basis of this bargain and shall not in any way be enforceable.

**7. INSPECTION.** Prior to shipment. Buyer shall have the right and shall be given the opportunity to inspect the goods at Verigon's place of manufacture. Such inspection shall be so conducted, as not to interfere unreasonably with the Verigon's operations, and consequent approval or rejection shall be made before shipment of the material. Notwithstanding the foregoing, if upon receipt of such material by Buyer, the same shall appear not to conform to the contract between Buyer and Verigon, Buyer shall notify Verigon, in writing, within forty-five (45) days from date of shipment of the goods of such condition. Failure to give notice within the time specified shall constitute an irrevocable acceptance of the goods. No claims, of any kind, by Buyer shall be valid without notice, as specified. Buyer shall afford Verigon a reasonable opportunity to inspect the material and repair or replace any materials determined by Verigon to be nonconforming. No material shall be returned without Verigon's consent.

**8. REMEDY FOR NONCONFORMING GOODS.** If the material furnished to Buyer shall fail to conform to the contract, or to any expressed or implied warranty as stated herein, Verigon, at his discretion, shall, within thirty (30) days of notice of said non-conformity, issue credit for or shall replace such non-conforming material at the original point of delivery and shall furnish instructions for the disposition of the nonconforming material. Any transportation charges involved in such disposition shall be for Verigon's account. Buyer's exclusive and sole remedy on account of or in respect to the furnishing of material that does not conform to this contract, or to any expressed or implied warranty, shall be to secure credit or replacement thereof as aforesaid. Verigon shall not, in any event, be liable for the cost of any labor expended on any such material or for any special, direct, indirect, incidental or consequential damages to anyone by reason of the fact that such material does not conform to this contract, or to any expressed or implied warranty herein. No claim of any kind will be considered on materials, which have been converted, changed, processed or used in manufacture.

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9. **SPECIFICATION CHANGES.** Specification changes are subject to acceptance by Verigon, including price revisions and any adjustments necessary to cover material procured and processed and labor expended prior to receipt by Verigon of revised specifications.

10. **FAIR LABOR. STANDARDS ACT.** Verigon represents that all items shall be manufactured or furnished in accordance with the applicable requirements of the Fair Labor Standards Act of 1938, as amended.

11. **NON-WAIVER.** Waiver by Verigon of the breach of any of the terms and conditions of this contract shall not be construed as a waiver of any other breach.

12. **RISK OF LOSS.** Identification of the goods sold herein occurs at such time as Verigon places said goods in the hands of the carrier for delivery as herein provided. Upon identification, risk of loss passes to Buyer. Buyer, without exception, is responsible for shipment of goods from Verigon to Buyer's location, including selection of carrier and any costs of expediting.

13. **INDEMNIFICATION.** Buyer will indemnify and hold Verigon harmless from, and defend Verigon against, any loss, suit, claim or damage to persons or property arising out of this Agreement or Buyer's possession or use of the products provided, or any purchaser's possession or use of the products provided, which indemnity will survive the termination of this Agreement, provided that such loss, claim or damage was not caused solely by the fault of Verigon.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, VERIGON SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING OUT OF THE PERFORMANCE, DELAYED PERFORMANCE OR BREACH OF PERFORMANCE OF THIS ORDER REGARDLESS WHETHER SUCH LIABILITY BE CLAIMED IN CONTRACT, EQUITY, TORT OR OTHERWISE. VERIGON'S OBLIGATION IS LIMITED SOLELY TO REPAIRING OR REPLACING (AT ITS OPTION AND AS SET FORTH IN SECTION 8), AT ITS APPROVED REPAIR FACILITY, ANY GOODS OR PARTS WHICH PROVE TO VERIGON'S SATISFACTION TO BE DEFECTIVE AS A RESULT OF DEFECTIVE MATERIALS OR WORKMANSHIP, IN ACCORDANCE WITH VERIGON'S STATED WARRANTY. IN NO EVENT SHALL VERIGON'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCT THAT GAVE RISE TO SUCH LIABILITY.

14. **CANCELLATION.** Any request for cancellation must be presented to Verigon in writing. Verigon may accept cancellation of an order for standard parts prior to standard lead time. Within standard lead time, cancellation may be refused or subject to a cancellation charge. Request for cancellation of any non-standard parts are subject to cancellation charges up to 100%. Buyer is responsible for any stranded inventory and any NCNR inventory ordered by Verigon. Blanket order cancellation will be based on the original ship schedule, not on subsequent delivery re-schedules.

15. **EXPORT RESTRICTIONS.** Buyer acknowledges that the Goods and any technical data related to the Goods may be controlled for export by the U.S. Department of Commerce or Department of State and those items may require authorization prior to export from the United States or re-export. Buyer agrees that it will not export, re-export, or otherwise distribute the Goods or any technical data related thereto, in violation of any export control laws or regulations of the United States.

16. **GOVERNING LAW.** All contracts between Buyer and Verigon shall be governed by and construed in accordance with the applicable laws of the State of Arizona.

**End of Terms and Conditions of Sale.**